

*g/Parrish 1-16-09 @ 9AM*

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

**FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.**

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FARMERS & MERCHANTS BANK, et al. )  
 )  
Defendants, )  
 )  
and )  
 )  
ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )  
 )  
Intervenors. )

NOV 12 2008

**PATRICIA PRESLEY, COURT CLERK**  
by \_\_\_\_\_  
DEPUTY

Case No. CJ-2006-3311

**DEFENDANTS' MOTION TO COMPEL**

COME NOW Defendants, Farmers & Merchants Bank, Farmers & Merchants Bancshares, Inc., John V. Anderson, and John Tom Anderson (collectively, "Defendants"), pursuant to 12 O.S. § 3237, and respectfully moves the Court to compel Plaintiff, Oklahoma Department of Securities ("ODS") to provide answers to Defendants' First Set of Interrogatories and to produce a privilege log with respect to documents it has withheld from production on the basis of privilege. Defendants have, in good faith, conferred with Plaintiff's counsel in an effort to obtain the requested discovery without court action; however, such attempts have been unsuccessful. In support of this Motion, Defendants would show as follows:

## FACTS

1. On August 13, 2007, Defendants served ODS with Defendants' First Set of Interrogatories and First Request for Production of Documents. *See* Exhibits "1" and "2" attached hereto.

2. On November 7, 2007, ODS served their Answers to Defendants' First Set of Interrogatories and their Responses to Defendants' First Request for Production of Documents. *See* Exhibits "3" and "4" attached hereto.

3. With respect to ODS's answers and amended answers to Defendants' First Set of Interrogatories, ODS has provided evasive and incomplete answers to Interrogatory Numbers 3, 5, 6, and 7. Pursuant to 12 O.S. § 3237(A)(3), "an evasive or incomplete answer is to be treated as a failure to answer."

4. With respect to ODS's Responses to Defendants' First Request for Production of Documents, Plaintiff has claimed various privileges without providing any detail with which Defendants can determine whether the privileges are applicable.

## ARGUMENT AND AUTHORITIES

### **I. Plaintiff's Answers to Interrogatories Nos. 3, 5, 6, and 7 Are Deficient**

Rather than providing full and complete answers to interrogatories that are critical to Defendants' defenses, ODS has directed Defendants to: (a) deposition testimony from various witnesses (*see* Interrogatory Nos. 5 and 6); and (b) unidentified documents in the possession of ODS (*see* Interrogatory Nos. 3 and 7). These answers, as a matter of law, are deficient as ODS has failed to comply with 12 O.S. § 3237(C) and is merely avoiding the duty to provide relevant and discoverable information to Defendants.

**A. Interrogatory No. 3**

In light of ODS's assertion of joint and several liability against Defendants under 71 O.S. § 408(b) of the Predecessor Act and 71 O.S. § 1-509(G)(5) of the Successor Act, Defendants' Interrogatory No. 3 sought information from ODS relating to the facts and circumstances that would give rise to joint and several liability under those statutes. Such requested information included, but was not limited to, the material or principal facts upon which ODS relies as evidence of each Defendants' material participation and/or aid in each sale made by Marsha Schubert that was violative of 71 O.S. § 408(a)(2) or Defendants' material aid in the conduct giving to Schubert's liability under 71 O.S. § 1-509(B). ODS originally objected to answering the interrogatory on grounds that it "does not represent the individual investors in its enforcement actions . . ." and that "such information requested in Interrogatory No. 3 was not requested by Plaintiff . . ."

Due to a variety of problems encountered by Defendants relating to discovery matters, this Court conducted a hearing on August 29, 2008. As a result of the hearing, this Court ruled that Defendants' joint and several liability arises only under 71 O.S. § 408(b) of the Predecessor Act and 71 O.S. § 1-509(G)(5) of the Successor Act. Therefore, the information requested by Defendants in Interrogatory No. 3 goes to the very heart of ODS's claim against Defendants for joint and several liability and they are entitled to know the factual basis for ODS's allegations against them so that they can defend against them in court. Moreover, ODS must, under 12 O.S. § 2011(B)(2) and (3), have a good faith basis that their claims "are warranted under existing law" and that the "allegations and other factual contentions have evidentiary support."

Based upon the foregoing, counsel for Defendants sent a letter to ODS's counsel on September 26, 2008, which requested that ODS provide complete answers to Interrogatory No. 3

within thirty (30) days. See Exhibit "5" attached hereto. The letter advised ODS that, at a minimum, the amended answer should include facts supporting Schubert's liability under the applicable law as well as facts tending to establish how the Defendants materially participated in the sales that violated 71 O.S. § 408(a)(2) and/or how the Defendants materially aided in the conduct giving rise to Schubert's liability under 71 O.S. § 1-509(B). In the event ODS refused to provide an amended answer, Defendants requested that ODS immediately notify counsel for Defendants so that appropriate action could be taken.

On October 23, 2008, ODS served Defendants with their Amendment to ODS's Response to Defendants' First Set of Interrogatories. See Exhibit "6" attached hereto. ODS's amended answer was no different than its original answer, with the exception of the following language:

Inspection of any records known by Plaintiff to contain information responsive to Interrogatory No. 3, and in the possession, custody or control of the Department, will be permitted as requested at the offices of the Department during normal business hours.

Thus, ODS's amended answer appears to be relying on 12 O.S. § 3237(C), which provides that:

Where the answer to an interrogatory may be derived or ascertained *from the business records of the party upon whom the interrogatory has been served* . . . and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory *to specify the records from which the answer may be derived or ascertained* . . . A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(emphasis added). However, as can be seen from a plain reading of this statute, ODS's answer to Interrogatory No. 3 fails to comply with that rule since it does not specify *any* records (let alone business records of ODS) from which the answers may be obtained.

Federal courts have consistently held that such answers are insufficient under the federal counterpart to § 3237(C).<sup>1</sup> For example, in *S.E.C. v. Elfindepan*, 206 F.R.D. 574 (M.D.N.C. 2002), the Defendant served the S.E.C with interrogatories that “were a mixture of contention interrogatories and requests for statement of facts.” *Id.* at 577. In response, the S.E.C. directed defendants to review various pleadings “and supporting documents, declarations, affidavits, and deposition excerpts.” *Id.* at 576. According to the S.E.C., such an answer was authorized by Fed.R.Civ.P. 33(d), which speaks to a situation in which the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served. In such a situation, it is a sufficient answer to the interrogatory to specify the business records from which the answer may be derived or ascertained.

The court noted that, in order to properly rely upon Fed.R.Civ.P. 33(d), the S.E.C. was required to “show that the named documents contain all of the information requested by the interrogatories.” *Id.* (citing *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 564 (D. Kan. 1997)). In that respect, the court stated that:

Critical to this inquiry is that the producing party have adequately and precisely specified for each interrogatory, the actual documents where information will be found. Document dumps or vague references to documents do not suffice.

*Id.* (citations omitted). Because the S.E.C. failed to identify any specific documents in their answer and because they failed to establish that the documents, in fact, contained all of the information requested by the interrogatories, the Court granted defendants’ motion to compel and ordered that the S.E.C. provide sufficient answers to the specific interrogatories.

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<sup>1</sup> See Fed.R.Civ.P. 33(d). Since 12 O.S. § 3237(C) is adopted from its federal counterpart, this Court may look to federal case law to aid its interpretation and application. *Heffron v. District Court Oklahoma County*, 2003 OK 75, ¶¶ 13 & 14, 77 P.3d 1069, 1076 (when a statute is adopted from the Federal Rules of Civil Procedure, court may look to relevant federal case law to assist them in interpreting the pertinent state provision).

The court further stated that Fed.R.Civ.P. 33(d) does not even apply when the interrogatories request a party's contentions or statement of facts which a party relies in support of their cause of action. "Rule 33(d) was intended to be used where an interrogatory makes broad inquiries and numerous documents must be consulted to ascertain facts, such as identities, quantities, data, action, tests, results, etc." *Id.* at 577 (citation omitted). Accordingly, the S.E.C.'s reliance upon Rule 33(d) to answer contention interrogatories and requests for statements of fact was misplaced.<sup>2</sup>

Similarly, *Continental Illinois National Bank & Trust Company of Chicago v. Caton*, 136 F.R.D. 682 (D. Kan. 1991) is another case involving a party's misguided use of Rule 33. In that case, the defendant served interrogatories that required plaintiff to "state specific facts supporting its various contentions and allegations in the complaint . . ." *Id.* at 683. In response, plaintiff's answers referred the defendant to deposition testimony of various witnesses as well as the allegations contained in the complaint.

The court first noted that it is a bedrock principle of discovery that a defendant "is entitled to know the factual basis of plaintiff's allegations and the documents which the plaintiff intends to use to support those allegations." *Id.* at 684 (citations omitted). For this reason, "an interrogatory may properly inquire into a party's contentions in the case and the factual basis therefor." *Id.* (citations omitted). In responding to such interrogatories, a party may not use Rule 33 as a procedural device for avoiding the duty to give information.

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<sup>2</sup> The court further noted that the documents relied upon by the S.E.C. – pleadings, depositions, exhibits, and affidavits – were not Rule 33(d) business records. *See also M&L Business Machine Company, Inc. v. Kloepfer*, 184 B.R. 366, 369 (D. Colo. 1995) ("Rule 33(d) targets situations in which the interrogatory would 'require a party to engage in a burdensome or expensive search into *his own business records* in order to give an answer'" (citing the Advisory Committee Notes to Fed.R.Civ.P. 34).

Further, the court recognized that, by filing a complaint, the plaintiff affirms that he or she has read the pleading and that, to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument, etc. Accordingly, the court noted that once allegations are lodged against a defendant:

[H]e must be allowed to require the accusing party to set forth, with particularity, what he is accused of doing, not doing, or both. That is one of the purposes of discovery. . . . Thus, interrogatories [designed] to discover the detail[ed] factual basis for a particular allegation or [claim], or to test whether there is any factual basis at all for a particular allegation or [claim], are entirely proper and appropriate. . . . The court believes [that a] defendant is entitled to that information before trial and that it is not unduly burdensome, oppressive or inappropriate to require plaintiff to finally be brought to quarter and state its position, as to each count, with specific particularity, and disclose the evidence upon which it is going to rely at trial rather than referring to a mass of deposition transcripts, records and documents from which a defendant is supposed to winnow and glean . . . the relevant from the non-relevant . . . the jewels from the junk, as it were.

*Id.* at 689. In response to such interrogatories, a plaintiff cannot use Rule 33 as a procedural device for avoiding the duty to give information. "Plaintiff's argument that defendant can discern, from the general mass, exactly what plaintiff claims defendant did or did not do, or both, as well as plaintiff can, is almost absurd. Only plaintiff and its lawyers know what evidence, as opposed to all the information it has discovered, it intends to offer at trial and the relationship of that evidence to its theories of recovery and claims against [defendant]."

Here, ODS has steadfastly refused to provide critical information to Defendants regarding, among other things, the manner in which they allegedly materially participated and/or aided in the individual sales that give Marsha Schubert's liability under the Oklahoma Securities Act. As such, ODS has placed Defendants in a position where they cannot learn what they must

defend against in court until such time as the Court orders ODS to provide a full and complete answer to Interrogatory No. 3.

Such action is wholly inconsistent with the recognized purpose of discovery, which is to “promote the discovery of true facts and circumstances of the controversy, rather than to aid in their concealment.” *Boswell v. Schultz*, 2007 OK 94, ¶ 14, 175 P.3d 390, 395 (citing *State ex rel. Remington Arms Co., Inc. v. Powers*, 1976 OK 103, ¶ 4, 552 P.2d 1150). The liberal discovery rules permit “parties to obtain the fullest possible knowledge of the issues and facts before trial . . . [in order to] to make a trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *State ex rel. Protective Health Services v. Billings Fairchild Center, Inc.*, 2007 OK CIV APP 24, ¶ 17, 158 P.3d 484, 489 (citations and internal quotations omitted). ODS’s answer to Interrogatory No. 3 clearly thwarts that purpose and Defendants respectfully request that the Court order a full and complete answer to it.

**B. Interrogatory Nos. 5, 6, and 7**

ODS’s answers to Interrogatory Nos. 5, 6, and 7 fail for a variety of reasons. Rather than answering Interrogatory No. 5, ODS objected on grounds that the interrogatory was “overly broad and oppressive.” Without waiving that objection, ODS directed Defendants to “deposition testimony given by Farmers & Merchants Bank employees.”

ODS’s objections are spurious. A review of Interrogatory No. 5 demonstrates that it specifically relates to the allegations made by ODS in paragraph 16 of its Petition; therefore, it cannot be overly broad. Additionally, ODS provides no reason whatsoever as to why answering Interrogatory No. 5 would be “oppressive.” Finally, the qualified answer provided by ODS directs Defendants to unspecified deposition transcripts, which are not even business records of

ODS. *See, e.g., Starlight International, Inc. v. Herlihy*, 190 F.R.D. 587 (D. Kan. 1999) (noting that only business records may be used in lieu of interrogatory answers; thus, one cannot produce deposition transcripts instead of answering an interrogatory). The same holds true for ODS's answers to Interrogatory Nos. 6 and 7.

Accordingly, Defendant respectfully request that the Court order ODS to provide full and complete answers to Interrogatory Nos. 5, 6, and 7.

## **II. Defendants Are Entitled to a Privilege Log from ODS**

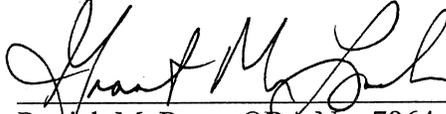
ODS has refused to produce a number of documents based upon various grounds of privilege. *See* Exhibit "4," Nos. 3-13, 15, 18, 20, 22-24, 26, 32-34, 36, 40-41, and 54. To each of these specific requests, ODS asserted that the documents are protected from disclosure by 71 O.S. § 1-607, 12 O.S. § 2502(B)(3), the deliberative process privilege, the work product doctrine, and /or the attorney client privilege. However, ODS has wholly failed to support its allegations of privilege with facts necessary to adjudicate the asserted privileges. When an asserted privilege lacks the specificity needed to adjudicate the asserted privilege, the district court has a duty under 12 O.S. § 3237(A) to order the preparation and service of a privilege log that includes: (1) the author or authors; (2) the recipient or recipients; (3) its origination date; (4) its length; (5) the nature of the document or its intended purpose; and (6) the basis for the objection. *See Scott v. Peterson*, 2005 OK 84, 126 P.3d 1232. Therefore, based upon the foregoing, Defendants respectfully request that the Court order ODS to provide a privilege log in support of their claims of privilege.

## **CONCLUSION**

Based upon the foregoing brief, Defendants respectfully request that the Court enter an order compelling ODS answer Defendants' interrogatories and to produce a privilege log;

compelling ODS to pay Defendants' attorney fees incurred in making this motion; and granting Defendants such other and further relief as the Court deems just and proper.

Respectfully Submitted,



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***ATTORNEYS FOR DEFENDANTS  
FARMERS & MERCHANTS BANK, FARMERS &  
MERCHANTS BANCSHARES, INC., JOHN V.  
ANDERSON and JOHN TOM ANDERSON***

**CERTIFICATE OF SERVICE**

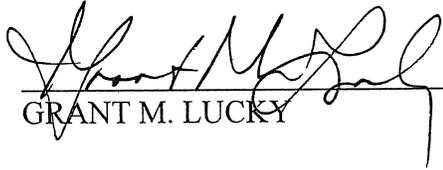
I hereby certify that on this 12<sup>th</sup> day of November 2008, a true and correct copy of the above and foregoing instrument was mailed, via U.S. First Class Mail, postage prepaid, to the following counsel of record:

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GRANT M. LUCKY

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )

Plaintiff, )

vs. )

Case No. CJ-2006-3311

FARMERS & MERCHANTS BANK, et al. )

Defendants, )

and )

ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )

Intervenors. )

**DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant Farmers & Merchants Bank (a state chartered Oklahoma banking entity), Farmers & Merchants Bancshares, Inc., John V. Anderson (individually and as an officer and direct of Farmers & Merchants Bank, and John and Tom Anderson (individually and as an officer and director of Farmers & Merchants Bank (collectively referred to as "Defendants"), pursuant to 12 O.S. §3233, direct the following First Set of Interrogatories to Plaintiff.

**DEFINITIONS AND TERMS USED HEREIN**

The following terms shall have the meanings set forth below:

1. The term "ODS" shall mean the Oklahoma Department of Securities and any person, employee, agent, or representative acting on its behalf.



2. The terms "you" and "your" shall mean the individual investor(s) who lost money in Marsha Schubert's purported investment program and on whose behalf ODS is seeking an order of restitution as alleged in ODS's Petition.

3. The terms "person" and "persons" include all entities including but not limited to the following: any and all individuals, associations, companies, partnerships, joint ventures, corporations, governmental entities, trusts, estates and any other form of business organization or arrangement.

4. "Document" or "writing" means any form of data compilation whether produced, reproduced, or stored on paper, cards, tapes, disks, belts, charts, films, computer storage devices, or any other medium and shall include, but not be limited to, any letter, note, electronic mail ("e-mail"), memorandum, article, book, published material, report, study, statement, speech, notebook, application, calendar, working paper, manual, brochure, analysis, telegram, transcript, summary, diary, agreement, contract, log, appointment book, graph, drawing, chart, financial statement, bank statement, bank check, deposit slip, receipt, invoice, bookkeeping entry, photograph, photostat, microfilm, x-ray film, sound recording, motion picture, videotape, or any other type of mechanical, electronic or magnetic impulse recording, and shall also include, but not be limited to, any draft or copy (with or without notes of changes thereon) of a writing or document in the possession, custody or control of the Plaintiff or any officer, employee, consultant, agent, or counsel of or for the Plaintiff.

5. With respect to documents or writings, the word "identify" means that you are to state:

- (a) the form of the document or writing (*e.g.*, letter, memorandum, *etc.*);
- (b) the date of its preparation;

- (c) the author, recorder, or sender;
- (d) each addressee or recipient;
- (e) the subject matter;
- (f) the name and address of any persons presently having custody or control of the same or a true copy of the document;
- (g) whether you consider the document to be privileged;
- (h) whether the document is in your possession, custody or control, and if not, state what disposition was made of it, the date and reason for such disposition, the information you have as to its present location and its contents or substance if known.

6. "Communication" means and includes any written, oral, telephonic or other inquiry, representation, discussion, conversation, negotiation, agreement, understanding, meeting, letter, note, telegraph, facsimile, telex, computer transmission, advertisement or interview and any other communication, representation, or statement which is not fully contained in a document or writing.

7. With respect to a communication, the word "identify" means that you are to:

- (a) state whether such communication was in person, by telephone or otherwise;
- (b) state the date, place and persons present or involved;
- (c) give a summary of the communication or statement of each person participating;
- (d) identify each document within your possession, custody or control which reports, summarizes or otherwise in any way memorializes or refers to

such communication or the subject matter of anything discussed or considered in such communication.

8. "Person" or "persons" shall be used to mean any natural persons or individuals, corporations, partnerships, firms, joint ventures, associations, or any other entities or ventures, including any successor in interest to such entity if liquidated or merged, and any governmental employees, agency, bureau, commissions, or governmental entity.

9. With respect to person or persons, the word "identify" means that you are to state the name and most recently known information regarding the place of residence, business address, employer and job title of each such person; and, if not a natural person, state in addition the nature of the entity described (*e.g.*, corporation, partnership, *etc.*).

10. "Regarding," "relating to" or "concerning" shall mean to consist of, refer to, pertain to, reflect, evidence or be in any way logically or factually connected with the matter discussed.

11. "Knowledge" includes first-hand information and information derived from any other source, including hearsay knowledge.

12. The terms "sale," "investment adviser," "agent," "broker-dealer," "security," and "investment adviser representative" are defined terms under the Oklahoma Securities Act and have those meanings ascribed to them therein, unless the context otherwise requires.

#### INSTRUCTIONS

1. These interrogatories are directed toward all information known or available to Plaintiff, through its officers, employees, agents, or attorneys, including information contained in the records and documents in its custody or control or available to it upon reasonable inquiry. Where interrogatories cannot be answered in full, they shall be answered as completely as

possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information or belief is possessed with respect to each unanswered or incompletely answered interrogatory.

2. These interrogatories shall be deemed continuing pursuant to 12 O.S. § 3226(E), so as to require amended answers if you obtain information on the basis of which you know that any response made was incorrect when made or, although correct when made, is no longer true. Otherwise, if supplemental answers are not provided, it will be assumed the answers originally given are accurate and complete.

3. As to every interrogatory which you fail to answer in whole or in part on the ground that the information sought involves a document or oral communication which you content to be privileged or otherwise protected from disclosure, state in detail:

- (a) the portion of the interrogatory to which the response is claimed to be privileged;
- (b) the identification of the document;
- (c) the general subject matter of the document or communication;
- (d) the author and all recipients of any document, and the persons involved in any oral communication;
- (e) the identity of any other persons having knowledge of the document or communication involved;
- (f) the nature of the privilege claimed; and
- (g) every fact on which you base the claim of privilege or that the information need not be disclosed.

## INTERROGATORIES

**INTERROGATORY NO. 1:** Identify each person who supplied information utilized in preparing the answers to each interrogatory, and as to any information furnished in answer to an interrogatory which is not within the personal knowledge of the person signing the answers, identify each person having personal knowledge of the information.

**INTERROGATORY NO. 2:** Identify by name, address, and telephone number all investors in Marsha Schubert's purported investment program on behalf of whom ODS is seeking restitution.

**INTERROGATORY NO. 3:** With respect to each investor identified in the preceding interrogatory, please identify the following:

- (a) The date(s) that Marsha Schubert sold a security to the investor;
- (b) Facts evidencing a sale of a security, including the method of payment;
- (c) A description of the security;
- (c) Whether the sale was solicited by Marsha Schubert or unsolicited;
- (d) A description of the material terms of the sale;
- (e) A description of each statement made by Marsha Schubert to the investor, including, but not limited to, the time, place, and content of each statement, alleged by ODS to have been in violation of 71 O.S. § 408(a)(2) and/or 71 O.S. § 1-509(C);
- (f) The material or principal facts upon which ODS relies as evidence of each Defendant's material participation and/or material aid in each sale of a security as described above;
- (g) Identify the documents evidencing the sale;
- (h) Identify the person(s) who witnessed each sale to the investor.

**INTERROGATORY NO. 4:** Identify each and every loan made by Defendants or their agents to Marsha Schubert which ODS claims provided material aid and/or material participation to Marsha Schubert's "Ponzi" scheme as alleged by ODS in paragraph 16 of its Petition.

**INTERROGATORY NO. 5:** Identify each and every request made by Defendants or their agents to Marsha Schubert for deposits to cover overdrafts as alleged by ODS in paragraph 16 of its Petition.

**INTERROGATORY NO. 6:** Identify the person(s) who assisted bank customers in participating in Marsha Schubert's purported investment program as alleged by ODS in paragraph 16 of its Petition, including in the answer a detailed description of the manner in which the person(s) identified assisted the bank customers.

**INTERROGATORY NO. 7:** Identify the total amount of investor proceeds deposited by Marsha Schubert into account(s) owned and/or controlled by Marsha Schubert at BancFirst or any other banking institution, including in your answer the date and amount of each deposit made, the depository institution, and the identity of the investor whose proceeds were deposited into the account(s). In lieu of answering this interrogatory, a legible copy of each deposit may be attached to your answers to the same, appropriately labeled to correspond to the interrogatory to which it relates.

**INTERROGATORY NO. 8:** Identify the name of each investment advisor, broker-dealer, or other person or entity who has invested funds on your behalf. Please provide the dates you used each such person or entity.

**INTERROGATORY NO. 9:** Identify the name of each banking institution in which you deposited money during the time period you invested funds with or through Marsha Schubert.

**INTERROGATORY NO. 10:** Identify each meeting and telephone conversation you had with Marsha Schubert in which the investment of money was discussed and identify who was present at the meeting or on the telephone call.

**INTERROGATORY NO. 11:** Identify each investment you made through Marsha Schubert and the amount of money you either gained or lost when the investment was sold or liquidated.

**INTERROGATORY NO. 12:** Identify any documents you received from any person or entity confirming or reflecting each of the investments identified in the preceding interrogatory, including in the answer a statement of whether you received always received confirmation statements confirming each of your investments through Marsha Schubert? If you did not receive such confirmation statements after each investment, please describe the circumstances under which you received such confirmation statements and when you did not.

**INTERROGATORY NO. 13:** With respect to any moneys you lost as a result of your investments in Marsha Schubert's purported investment program, state the amount of your claimed loss, identify how it was computed, and the date it was incurred or is expected to be incurred, and identify all documents referring to or relating to each such item or calculation.

**INTERROGATORY NO. 14:** Identify whether you consulted or spoke to an attorney concerning Marsha Schubert or your investments through Marsha Schubert at any time prior to October 14, 2004.

**INTERROGATORY NO. 15:** Identify all persons whom you told that you were investing through Marsha Schubert prior to October 14, 2004, and describe with particularity their relationship to you and the date(s), time(s) and substance of your conversation(s).

**INTERROGATORY NO. 16:** Did you make any inquiry of any employee or representative of AXA Advisors, LLC or Wilbanks Securities either by telephone or in writing about Marsha Schubert prior to October 14, 2004. If so, when was the inquiry and identify the person to whom you inquired or spoke.

**INTERROGATORY NO. 17:** Did you always receive monthly or other interim statements identifying all of your investments for the period through which you invested with Marsha Schubert? If so, how often did you receive such statements.

**INTERROGATORY NO. 18:** Identify by name, address, and telephone number each and every CPA, accountant, and/or tax advisor utilized by you from January 2000 through December 2005.

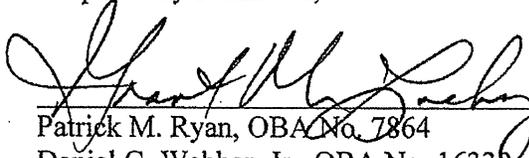
**INTERROGATORY NO. 19:** Identify all persons who have given written or recorded statements concerning the subject matter of this action, and state the date of each such statement, the identity of the person taking the statement, and the identity of its present custodian.

**INTERROGATORY NO. 20:** Identify all persons not identified in your answers to the other interrogatories who have personal knowledge of facts pertinent to the subject matter of this litigation, and for each person separately state the facts and observations within their knowledge.

**INTERROGATORY NO. 21:** Identify by name, address, and telephone number each and every individual you intend to call as an expert in this case.

**INTERROGATORY NO. 22:** State whether you or ODS have entered into any release, settlement or other agreement, formal or informal, whether reduced to writing or not, pursuant to which the liability of any person for any injury or damage arising out of the subject matter of this litigation has been limited, reduced or released in any manner.

Respectfully submitted,



Patrick M. Ryan, OBA No. 7864

Daniel G. Webber, Jr., OBA No. 16332

Matthew C. Kane, OBA No. 19502

Grant M. Lucky, OBA No. 17398

**RYAN, WHALEY & COLDIRON**

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**ATTORNEYS FOR DEFENDANTS**

**FARMERS & MERCHANTS BANK, FARMERS &**

**MERCHANTS BANCSHARES, INC., JOHN V.**

**ANDERSON and JOHN TOM ANDERSON**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August 2007, a true and correct copy of the above and foregoing instrument was mailed, via U.S. First Class Mail, postage prepaid, to the following counsel of record:

Melanie Hall, Esq.

Amanda Cornmesser, Esq.

Gerri Stuckey, Esq.

OKLAHOMA DEPARTMENT OF SECURITIES

120 North Robinson Avenue, Suite 860

Oklahoma City, Oklahoma 73102

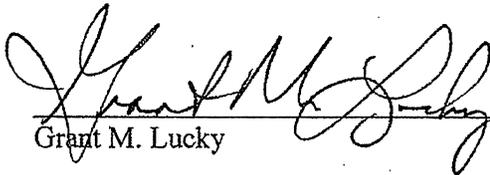
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*Attorney for Defendants John V. Anderson and John T. Anderson*

  
Grant M. Lucky

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )

Plaintiff, )

vs. )

Case No. CJ-2006-3311

FARMERS & MERCHANTS BANK, et al. )

Defendants, )

and )

ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )

Intervenors. )

**DEFENDANTS' FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Defendant Farmers & Merchants Bank (a state chartered Oklahoma banking entity), Farmers & Merchants Bancshares, Inc., John V. Anderson (individually and as an officer and direct of Farmers & Merchants Bank, and John and Tom Anderson (individually and as an officer and director of Farmers & Merchants Bank (collectively referred to as "Defendants"), pursuant to 12 O.S. §3234, direct the following First Requests for Production of Documents to Plaintiff. The requested documents should be timely produced for inspection and copying at the offices of Ryan, Whaley & Coldiron, 900 Robinson Renaissance, 119 North Robinson, Oklahoma City, Oklahoma, within thirty (30) days of service.



## DEFINITIONS AND TERMS USED HEREIN

The following terms shall have the meanings set forth below:

1. The term "ODS" shall mean the Oklahoma Department of Securities and any person, employee, agent, or representative acting on its behalf.

2. The terms "you" and "your" shall mean the individual investors who lost money in Marsha Schubert's purported investment program and on whose behalf ODS is seeking an order of restitution as alleged in ODS's Petition.

3. The terms "person" and "persons" include all entities including but not limited to the following: any and all individuals, associations, companies, partnerships, joint ventures, corporations, governmental entities, trusts, estates and any other form of business organization or arrangement.

4. "Document" or "writing" means any form of data compilation whether produced, reproduced, or stored on paper, cards, tapes, disks, belts, charts, films, computer storage devices, or any other medium and shall include, but not be limited to, any letter, note, electronic mail ("e-mail"), memorandum, article, book, published material, report, study, statement, speech, notebook, application, calendar, working paper, manual, brochure, analysis, telegram, transcript, summary, diary, agreement, contract, log, appointment book, graph, drawing, chart, financial statement, bank statement, bank check, deposit slip, receipt, invoice, bookkeeping entry, photograph, photostat, microfilm, x-ray film, sound recording, motion picture, videotape, or any other type of mechanical, electronic or magnetic impulse recording, and shall also include, but not be limited to, any draft or copy (with or without notes of changes thereon) of a writing or document in the possession, custody or control of the Plaintiff or any officer, employee, consultant, agent, or counsel of or for the Plaintiff.

5. With respect to documents or writings, the word "identify" means that you are to state:

- (a) the form of the document or writing (*e.g.*, letter, memorandum, *etc.*);
- (b) the date of its preparation;
- (c) the author, recorder, or sender;
- (d) each addressee or recipient;
- (e) the subject matter;
- (f) the name and address of any persons presently having custody or control of the same or a true copy of the document;
- (g) whether you consider the document to be privileged;
- (h) whether the document is in your possession, custody or control, and if not, state what disposition was made of it, the date and reason for such disposition, the information you have as to its present location and its contents or substance if known.

6. "Communication" means and includes any written, oral, telephonic or other inquiry, representation, discussion, conversation, negotiation, agreement, understanding, meeting, letter, note, telegraph, facsimile, telex, computer transmission, advertisement or interview and any other communication, representation, or statement which is not fully contained in a document or writing.

7. With respect to a communication, the word "identify" means that you are to:

- (a) state whether such communication was in person, by telephone or otherwise;
- (b) state the date, place and persons present or involved;

- (c) give a summary of the communication or statement of each person participating;
- (d) identify each document within your possession, custody or control which reports, summarizes or otherwise in any way memorializes or refers to such communication or the subject matter of anything discussed or considered in such communication.

8. "Person" or "persons" shall be used to mean any natural persons or individuals, corporations, partnerships, firms, joint ventures, associations, or any other entities or ventures, including any successor in interest to such entity if liquidated or merged, and any governmental employees, agency, bureau, commissions, or governmental entity.

9. With respect to person or persons, the word "identify" means that you are to state the name and most recently known information regarding the place of residence, business address, employer and job title of each such person; and, if not a natural person, state in addition the nature of the entity described (*e.g.*, corporation, partnership, *etc.*).

10. "Regarding," "relating to" or "concerning" shall mean to consist of, refer to, pertain to, reflect, evidence or be in any way logically or factually connected with the matter discussed.

11. "Knowledge" includes first-hand information and information derived from any other source, including hearsay knowledge.

12. In the event that any document called for by this request has been destroyed or discarded, that document is to be identified as follows:

- (a) the name, address, employer and job title of each person who signed or helped prepare the document and each person to whom it was addressed;

- (b) each indicated or blind copy;
- (c) the document's date, subject matter, number of pages and attachments or appendices;
- (d) the name, address, employer and job title of all persons to whom the document was distributed, to whom the document was shown, or to whom the document was explained;
- (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard;
- (f) the person who authorized such destruction or discard; and
- (g) the privilege asserted.

13. The terms "sale," "investment adviser," "agent," "broker-dealer," "security," and "investment adviser representative" are defined terms under the Oklahoma Securities Act and have those meanings ascribed to them therein, unless the context otherwise requires.

14. The term "Receiver" shall mean the court appointed receiver in the Logan County Suit, Case No. CJ-2004-256, *Oklahoma Department of Securities ex re. Irving L. Faught, Administrator v. Marsha Schubert, et al.*

### INSTRUCTIONS

1. These discovery requests are intended to ascertain information from and require you to make a full and complete search of all records and evidence in the custody, possession, or at the disposal of you or your agents, investigators, servants, or employees, including attorneys or accountants.

2. These discovery requests are continuing. If the answers or responses to the same change before trial of this action, you are required to furnish supplemental answers and/or

documents, in writing and under oath, or it will be assumed the answers originally given are accurate and complete.

3. In the event that you **object** to any request or part thereof, please provide the following information:

- (a) a detailed statement of the grounds for your objection;
- (b) if the document request seeks information which is objected to on the grounds of attorney-client privilege or the work product doctrine, provide:
  - (i) the name, address, phone number, and place of employment of all persons present at the time of any communication or who signed or helped prepare the document or who were subsequently provided any memorialization of any such communication and each person to whom it was addressed;
  - (ii) state the general subject matter of the information which is objected to;
  - (iii) state the date of any communication, the name of the person to whom the communication was made, the physical location of where the communication was made, and the date of the communication.

4. Documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the requests.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

By these Request for Production of Documents, Defendants seek the production of all documents relating to the present controversy between the parties. The following specific

requests are not intended to narrow this scope, but are only intended to help effectuate this stated purpose.

As set forth in the instructions, **documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the requests.**

**REQUEST NO. 1:** All documents sufficient to identify the names, current or last known addresses, and telephone numbers of all persons on behalf of whom ODS claims Defendants are jointly and severally liable to and is seeking restitution.

**REQUEST NO. 2:** All documents provided by ODS to persons who lost money in Schubert's purported investment program.

**REQUEST NO. 3:** All documents reflecting communications between ODS and persons who lost money in Schubert's purported investment program.

**REQUEST NO. 4:** All documents sufficient to identify ODS employees, representatives, and agents, excluding clerical staff, who performed work in connection with the investigation of Marsha Schubert's purported investment program.

**REQUEST NO. 5:** All documents reflecting or concerning any agreements or understandings between ODS and the Receiver concerning the recovery of monies for those Persons who lost money in Schubert's purported investment program.

**REQUEST NO. 6:** All documents provided to ODS or received by ODS from any source in connection with ODS File No. 05-031, including those from: (a) Marsha Schubert; (b) Schubert & Associates; (c) Richard L. Schubert d/b/a Schubert & Associates; (d) Richard L. Schubert; (e) AXA Advisors L.L.C.; (f) the SEC, the NASD, or any other state, federal, or

private agency; (g) Wilbanks Securities, Inc.; or (h) any person who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 7:** All documents concerning any communications between or among ODS and any person who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 8:** All documents sufficient to identify all persons that were involved in the alleged sale of securities to those persons who lost money in Schubert's purported investment program.

**REQUEST NO. 9:** All documents ODS received from or provided to any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**REQUEST NO. 10:** All documents concerning communications between or among ODS and any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**REQUEST NO. 11:** All documents concerning or reflecting any testimony or interviews given by ODS to any other state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**REQUEST NO. 12:** All document requests and subpoenas addressed to ODS by any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**REQUEST NO. 13:** To the extent not provided in response to the foregoing Requests, all documents relating to any formal or informal inquiries, investigations, lawsuits or regulatory actions by any state, federal, or private agency or entity concerning the following:

- (a) Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants' compliance with federal and/or state laws and regulations;
- (b) Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., or Wilbanks Securities, Inc.'s compliance with regulations of registered broker-dealers.

**REQUEST NO. 14:** All documents, including, without reservation, notices, minutes, exhibits, notes, agendas or resolutions of all meetings of ODS's Board between 2004 to the present, including any committee or subcommittee thereof (or any other body responsible for management of ODS's business), in which Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants were discussed, and all documents distributed to, utilized in connection with, or otherwise relating to any such meetings, and all communications generated in connection with such meetings.

**REQUEST NO. 15:** All documents concerning any analysis performed by ODS or any other person, relating to:

- (a) F&M Bank and BancFirst's compliance with banking policies and/or banking regulations;
- (b) F&M Bank and BancFirst's compliance with their internal policies, including internal audits;
- (c) regulatory or other formal or informal inquiry or investigation of F&M Bank and BancFirst;

**REQUEST NO. 16:** All documents concerning any sale or purchase made by any person who lost money in Schubert's purported investment program.

**REQUEST NO. 17:** All documents concerning communications or writings about this litigation, whether internal or received from or sent to any other person or entity.

**REQUEST NO. 18:** All press releases, announcements, news articles, interviews, conferences or other public disclosures concerning Marsha Schubert's purported investment program and/or the Defendants' alleged liability in this case, whether prepared by ODS or any other person, including all drafts, revised versions, and final versions.

**REQUEST NO. 19:** All organizational charts of ODS and all documents that describe its structure and management hierarchy.

**REQUEST NO. 20:** All documents that constitute or refer to correspondence, meetings, or communications between ODS and Marsha Schubert, Richard Schubert, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**REQUEST NO. 21:** All correspondence and communications between, and documents to and from, ODS and BancFirst relating to the subject matter of this litigation.

**REQUEST NO. 22:** All correspondence and communications between, and documents to and from, ODS and AXA Advisors, L.L.C. relating to the subject matter of this litigation.

**REQUEST NO. 23:** All correspondence and communications between, and documents to and from, ODS and Wilbanks Securities, Inc. relating to the subject matter of this litigation.

**REQUEST NO. 24:** All documents concerning any actual or potential violation by AXA Advisors, L.L.C., Wilbanks Securities, Inc., and/or BancFirst of any securities law or regulation relating to Schubert's purported investment program.

**REQUEST NO. 25:** All documents concerning complaints against Defendants, which involve any subject matter covered in any allegation made by ODS against Defendants, by persons who lost money in Schubert's purported investment program.

**REQUEST NO. 26:** All documents received from or provided to any lawyer representing Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., BancFirst, or Wilbanks Securities, Inc. relating to Schubert's purported investment program.

**REQUEST NO. 27:** All documents evidencing investment proceeds deposited by Marsha Schubert into bank accounts owned or controlled by Marsha Schubert, excluding Schubert's F&M accounts.

**REQUEST NO. 28:** All "Schubert & Associates Questionnaire" forms completed by investors and submitted to ODS either through ODS's website, the United States mail, or any other means of communications.

**REQUEST NO. 29:** All licensing records maintained by ODS for Marsha Schubert and all prior complaints by or on behalf of any person or entity involving Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities.

**REQUEST NO. 30:** All account statements created by Marsha Schubert and provided to investors in Schubert's purported investment program as alleged by ODS in paragraph 41 of its Petition.

**REQUEST NO. 31:** All deposition transcripts taken in ODS's action against Marsha Schubert in Logan County, Oklahoma, Case No. CJ-2004-256, excluding those taken of F&M employees.

**REQUEST NO. 32:** All correspondence and communications between, and documents to and from, ODS and Renee Huffaker relating to the subject matter of this litigation.

**REQUEST NO. 33:** All correspondence and communications between, and documents to and from, ODS and the Receiver relating to the subject matter of this litigation.

**REQUEST NO. 34:** All documents, including but not limited to worksheets and calculations, which relate in any way to ODS's assertion that the Defendants make restitution to the Receiver for the benefit of those investors who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 35:** All documents reflecting the amount of monies recovered by the Receiver from any source.

**REQUEST NO. 36:** All documents concerning or evidencing any person who lost money in Marsha Schubert's purported investment program and the amount of their loss.

**REQUEST NO. 37:** All bank statements, cancelled checks, and other documents reflecting any person's investment or payment to Marsha Schubert as part of her purported investment program.

**REQUEST NO. 38:** All monthly, quarterly, or annual summary of investment activity sent by Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities to any person who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 39:** All confirmation statements sent by Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities to any person who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 40:** All documents concerning or evidencing the amount(s) invested by any person who lost money in Marsha Schubert's purported investment program.

**REQUEST NO. 41:** All documents concerning or evidencing any amounts paid by the Receiver, Wilbanks Securities, or AXA Advisors, LLC to any person who lost money in Marsha Schubert's purported investment program, including any amounts where there is a legal obligation to pay.

**REQUEST NO. 43:** All documents concerning or reflecting any meeting or telephone conversation between any person who lost money in Marsha Schubert's purported investment program and Marsha Schubert.

**REQUEST NO. 44:** All telephone records and notes of telephone calls or conversations that occurred between persons who lost money in Marsha Schubert's purported investment program (and any person acting on their behalf) and Marsha Schubert between January 2000 and December 2004.

**REQUEST NO. 45:** Financial statements or similar statements of the assets, liabilities, and/or net worth of persons who lost money in Schubert's purported investment program for the period of time covering three years prior to their first transaction with Marsha Schubert to April 21, 2006.

**REQUEST NO. 46:** Copies of all documents that persons who lost money in Marsha Schubert's purported investment program received from Marsha Schubert and from any entities in which they invested through Marsha Schubert, including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence for three years prior to their first transaction with Marsha Schubert through April 21, 2006.

**REQUEST NO. 47:** All records of investment activity for any person who lost money in Marsha Schubert's purported investment program for three years prior to their first transaction with Marsha Schubert through April 21, 2006. This request includes all statements or summaries of account(s) such person had with any investment advisor, broker-dealer, or other person or entity who invested money on their behalf.

**REQUEST NO. 48:** All contracts, agreements, or other documents relating to your account with each such investment advisor, broker-dealer, or other person or entity who invested your money for three years prior to your first transaction with Marsha Schubert through April 21, 2006.

**REQUEST NO. 49:** All federal and state tax returns for any person who lost money in Marsha Schubert's purported investment program for the years 1997 through 2006.

**REQUEST NO. 50:** All letters, written inquiries, or documents you sent to AXA Advisors, LLC or Wilbanks Securities regarding Marsha Schubert or any investments you made with or through Marsha Schubert.

**REQUEST NO. 51:** All documents concerning any due diligence efforts undertaken by you, your representatives, or any other person in connection with each transaction involving Marsha Schubert's purported investment programs.

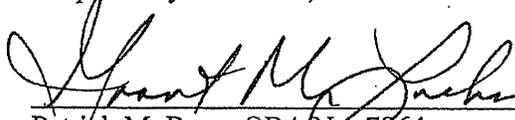
**REQUEST NO. 52:** All previously prepared written statements by persons with knowledge of the facts and circumstances related to the subject matter of this litigation, including those by accountants, tax advisors, financial planners, or other associated person(s), and any other third party.

**REQUEST NO. 53:** All documents showing action taken by persons who lost money in Marsha Schubert's purported investment program to limit losses in the transaction(s) at issue.

**REQUEST NO. 54:** All documents identified, reviewed, referred to, or relied upon in ODS's answers to Defendants' interrogatories.

**REQUEST NO. 55:** All documents evidencing any release, settlement, or other agreement pursuant to which the liability of any person for any injury or damage arising out of the subject matter of this litigation has been limited, reduced, or released in any manner.

Respectfully submitted,



Patrick M. Ryan, OBA No. 7864

Daniel G. Webber, Jr., OBA No. 16332

Matthew C. Kane, OBA No. 19502

Grant M. Lucky, OBA No. 17398

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**ATTORNEYS FOR DEFENDANTS**

**FARMERS & MERCHANTS BANK, FARMERS &**

**MERCHANTS BANCSHARES, INC., JOHN V.**

**ANDERSON and JOHN TOM ANDERSON**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August 2007, a true and correct copy of the above and foregoing instrument was mailed, via U.S. First Class Mail, postage prepaid, to the following counsel of record:

Melanie Hall, Esq.  
Amanda Cornmesser, Esq.  
Gerri Stuckey, Esq.  
OKLAHOMA DEPARTMENT OF SECURITIES  
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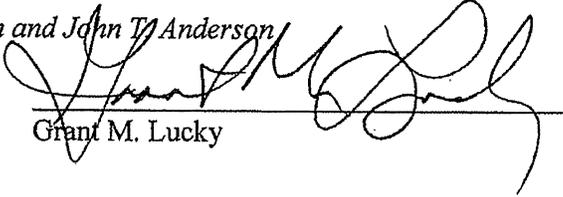
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-and-

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*Attorney for Defendants John V. Anderson and John T. Anderson*



Grant M. Lucky

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FARMERS & MERCHANTS BANK, et al. )  
 )  
Defendants, )  
 )  
and )  
 )  
ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )  
 )  
Intervenors. )

Case No. CJ-2006-3311

PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator,  
answers the first set of interrogatories put forth by Defendants as follows:

Preliminary Statement

Defendants have included a section of "Instructions" and a section of "Definitions" in their discovery requests. Plaintiff objects to the extent that the content of either of these sections exceeds the provisions and requirements of the Oklahoma Discovery Code and Plaintiff responds accordingly. Moreover, with regard to the "Definitions," Plaintiff objects to any definition that varies from the usual and normal meaning of any such term.

Specifically, the Plaintiff objects to the definition of the terms "you" and "your" in Definition No. 2. The Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf"



of any person. Rather, the Department brings its actions to enforce this state's securities laws, separate and apart from (although it may frequently occur with) the interest of injured investors. *SEC v. Egan*, 856 F. Supp. 401 (N.D. Ill. 1993).

In addition, the Department objects to Instruction No. 1 wherein Defendants state that they are directing their interrogatories toward all information available to the Department "upon its reasonable inquiry." Plaintiff objects to the extent that Instruction No. 1 exceeds the provisions and requirements of the Oklahoma Discovery Code. The Department is under no obligation to retrieve information that is not contained in the records or documents already in its possession, custody or control, or within the knowledge of any officer, employee, attorney, investigator or agent of the Department. 12 O.S. § 3234(A)(1). The persons who lost money in Marsha Schubert's investment scheme are not within or under the Department's control. The Department is under no obligation to make any type of inquiry to obtain information not otherwise in the Department's possession, custody or control. It is Defendants' responsibility to subpoena pertinent third parties for their information. *Central Cal. Conference Ass'n of Seventh-Day Adventists v. Great American Ins. Co.*, 1998 WL 46813 (D. Or.).

Many of Defendants' discovery requests require interpretation. Such interpretation by the Plaintiff may, in some or all cases, be different from that which Defendants intended. The Plaintiff hereby places Defendants on notice that such interpretation has taken place in responding to Defendants' interrogatories.

Further, all answers and documents produced are made with an express reservation of the general objections set forth above and any specific objections set forth below, and a provision of any response herein or production of any document in response hereto is not and cannot be deemed a waiver of any such objection. Plaintiff reserves the right to supplement its responses

as necessary.

### INTERROGATORIES

**INTERROGATORY NO. 1:** Identify each person who supplied information utilized in preparing the answers to each interrogatory, and as to any information furnished in answer to an interrogatory which is not within the personal knowledge of the person signing the answers, identify each person having personal knowledge of the information.

**RESPONSE TO INTERROGATORY NO. 1:** Amanda Commesser, Melanie Hall and Gerri Stuckey supplied information utilized in preparing the answer to each interrogatory. Others having personal knowledge of the information utilized to prepare the answer to each interrogatory are Dan Clarke, Supervisory Investigator, Jennifer Shaw, Enforcement Attorney, Glen Grossman, Investigator, and Connel Smalling, Investigator, all employees of the Oklahoma Department of Securities, located at 120 North Robinson, Oklahoma City, Oklahoma 73102.

**INTERROGATORY NO. 2:** Identify by name, address, and telephone number all investors in Marsha Schubert's purported investment program on behalf of whom ODS is seeking restitution.

**RESPONSE TO INTERROGATORY NO. 2:** Plaintiff objects to Interrogatory No. 2 as the Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf" of any person. Rather the Department brings its actions to enforce this state's securities laws, separate and apart from the interest of injured investors. Plaintiff filed this action, and the District Court of Oklahoma granted equitable relief, pursuant to the Oklahoma Securities Act (Predecessor Act), 71 O.S. § 1-413, 501, 701-703 (1991 & Supp. 2003), and the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). Without waiving the objection, the names and addresses of those persons who have filed receivership claims and received distributions through the Receiver are available in the public filings with the Logan County District Court in Case No. CJ-2004-256.

**INTERROGATORY NO. 3:** With respect to each investor identified in the preceding interrogatory, please identify the following:

- (a) The date(s) that Marsha Schubert sold a security to the investor;
- (b) Facts evidencing a sale of a security, including the method of payment;
- (c) A description of the security;
- (c) Whether the sale was solicited by Marsha Schubert or unsolicited;
- (d) A description of the material terms of the sale;
- (e) A description of each statement made by Marsha Schubert to the investor, including, but not limited to, the time, place, and content of each

statement, alleged by ODS to have been in violation of 71 O.S. § 408(a)(2) and/or 71 O.S. § 1-509(C);

- (f) The material or principal facts upon which ODS relies as evidence of each Defendant's material participation and/or material aid in each sale of a security as described above;
- (g) Identify the documents evidencing the sale;
- (h) Identify the person(s) who witnessed each sale to the investor.

**RESPONSE TO INTERROGATORY NO. 3:** Plaintiff objects to Interrogatory No. 3 as the Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf" of any person. Consequently, the information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department. Without waiving the objection, the names and addresses of those persons who have filed receivership claims and received distributions through the Receiver are available in the public filings with the Logan County District Court in Case No. CJ-2004-256.

**INTERROGATORY NO. 4:** Identify each and every loan made by Defendants or their agents to Marsha Schubert which ODS claims provided material aid and/or material participation to Marsha Schubert's "Ponzi" scheme as alleged by ODS in paragraph 16 of its Petition.

**RESPONSE TO INTERROGATORY NO. 4:** Plaintiff objects to Interrogatory No. 5 as the term "agent" is not defined by Defendants. Without waiving said objection, Plaintiff responds to this Interrogatory No. 4 as follows:

<u>Loan Date</u>	<u>Loan Amount</u>	<u>Loan Officer</u>
09/04/2001	\$ 9,840.00	Chad Johnson
09/06/2001	\$25,688.00	Chad Johnson
09/06/2001	\$28,652.00	Chad Johnson
09/06/2001	\$19,760.00	Chad Johnson
10/30/2001	\$ 8,000.00	Chad Johnson
12/19/2001	\$ 7,109.33	Chad Johnson
10/22/2002	\$22,765.53	Chad Johnson
10/08/2003	\$44,153.70	Chad Johnson
10/08/2003	\$50,355.00	Chad Johnson
10/08/2003	\$53,935.00	Chad Johnson

The following transactions involve the renewal of loans when there were not sufficient balances in Marsha Schubert's accounts to continue to operate her business and repay the loans. In certain instances, loans were renewed and additional monies loaned.

<u>Loan Date</u>	<u>Loan Amount</u>	<u>Loan Officer</u>
05/12/2000	\$ 7,810.11	Chad Johnson
10/26/2000	\$ 4,401.00	Chad Johnson
03/21/2001	\$15,000.00	Chad Johnson
06/19/2001	\$14,000.00	Chad Johnson
06/21/2001	\$15,000.00	Chad Johnson
08/21/2001	\$15,000.00	Chad Johnson
08/27/2001	\$13,063.91	Chad Johnson
08/31/2001	\$14,000.00	Chad Johnson
11/26/2001	\$15,000.00	Chad Johnson
02/06/2002	\$ 8,000.00	Chad Johnson
02/13/2002	\$11,302.92	Chad Johnson
02/27/2002	\$15,035.00	Chad Johnson
04/01/2002	\$15,035.00	Chad Johnson
04/01/2002	\$ 6,035.00	Chad Johnson
06/10/2002	\$15,979.61	Chad Johnson
07/10/2002	\$15,035.00	Chad Johnson
06/26/2003	\$24,035.00	Chad Johnson
10/08/2003	\$15,035.00	Chad Johnson
11/21/2003	\$14,867.24	Chad Johnson
01/16/2004	\$36,750.74	Chad Johnson
03/05/2004	\$34,035.00	Chad Johnson
04/28/2004	\$34,035.00	Chad Johnson
05/25/2004	\$19,535.00	Chad Johnson
09/16/2004	\$34,035.00	Chad Johnson

**INTERROGATORY NO. 5.** Identify each and every request made by Defendants or their agents to Marsha Schubert for deposits to cover overdrafts as alleged by ODS in paragraph 16 of its Petition.

**RESPONSE TO INTERROGATORY NO. 5:** Plaintiff objects to Interrogatory No. 5 as being overly broad and oppressive, particularly in light of the general statement made in paragraph 16 of the Petition. Further, the term "agent" is not defined by Defendants. Without waiving said objections, Plaintiff directs Defendants to the deposition testimony given by Farmers & Merchants Bank employees.

**INTERROGATORY NO. 6:** Identify the person(s) who assisted bank customers in participating in Marsha Schubert's purported investment program as alleged by ODS in paragraph 16 of its Petition, including in the answer a detailed description of the manner in which the person(s) identified assisted the bank customers.

**RESPONSE TO INTERROGATORY NO. 6:** Farmers & Merchants Bank employees referred bank customers to Marsha Schubert for investment purposes. Plaintiff directs Defendants to the deposition testimony given by Farmers & Merchants Bank employees, particularly, Edward Stanton and Chad Johnson.

**INTERROGATORY NO. 7:** Identify the total amount of investor proceeds deposited by Marsha Schubert into account(s) owned and/or controlled by Marsha Schubert at BancFirst or any other banking institution, including in your answer the date and amount of each deposit made, the depository institution, and the identity of the investor whose proceeds were deposited into the account(s). In lieu of answering this interrogatory, a legible copy of each deposit may be attached to your answers to the same, appropriately labeled to correspond to the interrogatory to which it relates.

**RESPONSE TO INTERROGATORY NO. 7:** Inspection of bank records known by Plaintiff to contain information responsive to Interrogatory No. 7, and in the possession, custody or control of the Department, will be permitted as requested at the offices of the Department during normal business hours.

**INTERROGATORY NO. 8:** Identify the name of each investment advisor, broker-dealer, or other person or entity who has invested funds on your behalf. Please provide the dates you used each such person or entity.

**RESPONSE TO INTERROGATORY NO. 8:** The Department objects to Interrogatory No. 8, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 9:** Identify the name of each banking institution in which you deposited money during the time period you invested funds with or through Marsha Schubert.

**RESPONSE TO INTERROGATORY NO. 9:** The Department objects to Interrogatory No. 9, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 10:** Identify each meeting and telephone conversation you had with Marsha Schubert in which the investment of money was discussed and identify who was present at the meeting or on the telephone call.

**RESPONSE TO INTERROGATORY NO. 10:** The Department objects to Interrogatory No. 10, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 11:** Identify each investment you made through Marsha Schubert and the amount of money you either gained or lost when the investment was sold or liquidated.

**RESPONSE TO INTERROGATORY NO. 11:** The Department objects to Interrogatory No. 11, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 12:** Identify any documents you received from any person or entity confirming or reflecting each of the investments identified in the preceding interrogatory, including in the answer a statement of whether you received always received confirmation statements confirming each of your investments through Marsha Schubert. If you did not receive such confirmation statements after each investment, please describe the circumstances under which you received such confirmation statements and when you did not.

**RESPONSE TO INTERROGATORY NO. 12:** The Department objects to Interrogatory No. 12, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 13:** With respect to any moneys you lost as a result of your investments in Marsha Schubert's purported investment program, state the amount of your claimed loss, identify how it was computed, and the date it was incurred or is expected to be incurred, and identify all documents referring to or relating to each such item or calculation.

**RESPONSE TO INTERROGATORY NO. 13:** The Department objects to Interrogatory No. 13, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 14:** Identify whether you consulted or spoke to an attorney concerning Marsha Schubert or your investments through Marsha Schubert at any time prior to October 14, 2004.

**RESPONSE TO INTERROGATORY NO. 14:** The Department objects to Interrogatory No. 14, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 15:** Identify all persons whom you told that you were investing through Marsha Schubert prior to October 14, 2004, and describe with particularity their relationship to you and the date(s), time(s) and substance of your conversation(s).

**RESPONSE TO INTERROGATORY NO. 15:** The Department objects to Interrogatory No. 15, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 16:** Did you make any inquiry of any employee or representative of AXA Advisors, LLC or Wilbanks Securities either by telephone or in writing about Marsha Schubert prior to October 14, 2004. If so, when was the inquiry and identify the person to whom you inquired or spoke.

**RESPONSE TO INTERROGATORY NO. 16:** The Department objects to Interrogatory No.

16, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 17:** Did you always receive monthly or other interim statements identifying all of your investments for the period through which you invested with Marsha Schubert? If so, how often did you receive such statements.

**RESPONSE TO INTERROGATORY NO. 17:** The Department objects to Interrogatory No. 17, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 18:** Identify by name, address, and telephone number each and every CPA, accountant, and/or tax advisor utilized by you from January 2000 through December 2005.

**RESPONSE TO INTERROGATORY NO. 18:** The Department objects to Interrogatory No. 18, based on the objections to Definition No. 2 and Instruction No. 1 cited above. The information requested in this Interrogatory No. 3 was not requested by Plaintiff and such persons are not within the control of the Department.

**INTERROGATORY NO. 19:** Identify all persons who have given written or recorded statements concerning the subject matter of this action, and state the date of each such statement, the identity of the person taking the statement, and the identity of its present custodian.

**RESPONSE TO INTERROGATORY NO. 19:**

<u>Person Deposed</u>	<u>Date</u>	<u>Deposition Taken By</u>	<u>Court Reporting Service</u>
Beth Armer	4/4/05	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Roger Berryman	10/23/06	Amanda Cornmesser and Bradley E. Davenport	D&R Reporting and Video, Inc.
Michael F. Brennan	3/31/05	Amanda Cornmesser	Word for Word Reporting, LLC
Ella Carr	3/28/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Jordan Carris	4/4/05	Amanda Cornmesser	Word for Word Reporting, LLC
Jan Fagg	2/3/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Irving L. Faught	1/17/07	Richard Parrish	Steve Meador & Associates
Kathleen Gibson	2/6/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Douglas L. Jackson	3/20/06	Jack Mattingly, Sr.	D&R Reporting and Video, Inc.
Chad Johnson	4/7/05	Amanda Cornmesser and Douglas L. Jackson	Word for Word Reporting, LLC
Richard LeBoeuf	10/20/05	Amanda Cornmesser and Douglas L. Jackson	Word for Word Reporting, LLC

<u>Person Deposed</u>	<u>Date</u>	<u>Deposition Taken By</u>	<u>Court Reporting Service</u>
Robert W. Mathews	10/17/06	Amanda Cornmesser and Bradley E. Davenport	Steve Meador & Associates
Melissa Moon	4/4/05	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Detria Owens	8/31/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Robert Owens	8/31/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Barry Pollard	2/15/07 & 3/8/07	Amanda Cornmesser	Word for Word Reporting, LLC
James Powell	8/23/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Richard Schubert	1/18/05	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Don Spicer	4/15/05	Amanda Cornmesser	Word for Word Reporting, LLC
Ed Stanton	4/6/05	Amanda Cornmesser and Douglas L. Jackson	Word for Word Reporting, LLC
Jim Talkington	4/25/05	Amanda Cornmesser and Douglas L. Jackson	Word for Word Reporting, LLC
Justin Tarrant	2/14/05	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Dennis Themer	4/1/05	Amanda Cornmesser	Word for Word Reporting, LLC
Bobby Walker	10/17/06	Amanda Cornmesser	Word for Word Reporting, LLC
Jeff Wilcox	4/1/05	Amanda Cornmesser	Word for Word Reporting, LLC
Marvin Wilcox	9/13/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC
Pam Wilcox	9/13/06	Amanda Cornmesser and Bradley E. Davenport	Word for Word Reporting, LLC

The transcripts for each of the depositions is available from the respective court reporting service.

In addition, a town hall meeting on October 20, 2004, in Crescent, in which Irving L. Faught and Douglas Jackson spoke was video taped. Statements by Richard Reynolds and Steve Sanders have also been video taped. Plaintiff also directs Defendants to the affidavits of Dan Clarke and Carol Gruis filed in Oklahoma County Case Nos. CJ-2005-3796 and CJ-2005-3799.

**INTERROGATORY NO. 20:** Identify all persons not identified in your answers to the other interrogatories who have personal knowledge of facts pertinent to the subject matter of this litigation, and for each person separately state the facts and observations within their knowledge.

**RESPONSE TO INTERROGATORY NO. 20:** The following persons may have personal knowledge of facts pertinent to the subject matter of this litigation, that is, their specific transactions by or through Marsha Schubert: those individuals named as defendants in the Plaintiff's unjust enrichment suit pending in Oklahoma County (Case Nos. CJ-2005-3796 and

CJ-2005-3799); those individuals filing claims with and receiving distributions from the Receiver in the pending matter in Logan County (Case No. CJ-2004-256); Joyce Liebl; Joann Holthus; former employees of Marsha Schubert, Julie Hanks, Ellen Benner, Claudette Cue, Vicki Klopfenstein, Kathy Counts, Leeann Stanton, Wanda Martin, and Leila Hanks; Jim York; Darren Telford; and David Morley.

**INTERROGATORY NO. 21:** Identify by name, address, and telephone number each and every individual you intend to call as an expert in this case.

**RESPONSE TO INTERROGATORY NO. 21:** None at present; Plaintiff is aware of its continuing duty to supplement its response pursuant to 12 O.S. § 3226(E).

**INTERROGATORY NO. 22:** State whether you or ODS have entered into any release, settlement or other agreement, formal or informal, whether reduced to writing or not, pursuant to which the liability of any person for any injury or damage arising out of the subject matter of this litigation has been limited, reduced or released in any manner.

**RESPONSE TO INTERROGATORY NO. 22:** The Department objects to Interrogatory No. 22, based on the objection to Definition No. 2 cited above, as to any person other than the Department. Without waiving the objection, the only person to date who has been found liable for violations of this state's securities laws and liable for any injury or damage arising out of the subject matter of this litigation is Marsha Schubert. The Department has not entered into any release, settlement or other agreement, formal or informal, with Marsha Schubert. The Department and Receiver have dismissed persons from the civil action based on unjust enrichment in Oklahoma County Case No. CJ-2005-3796. Such persons are identified in the public filings with the Oklahoma County District Court. The amount of damages disgorged, or to be disgorged, by Michael Bostick, Kathleen Gibson, Detria Owens, Robert Owens, Jr., James Powell, Garrett Schubert, and Sean Winn was reduced for settlement purposes.

**Oklahoma Department of Securities**

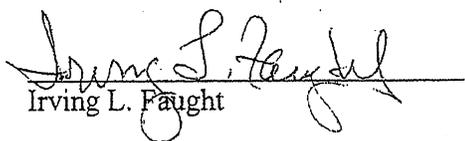
By: Irving L. Faught  
Irving L. Faught, Administrator  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102

As to the interrogatories to which objections have been made:

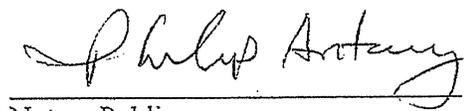
By: Melanie Hall  
Melanie Hall  
Attorney for Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
405.280.7700

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OKLAHOMA )

I, Irving Faught, of lawful age, being first duly sworn, upon oath states that he is the Administrator of the Oklahoma Department of Securities and is authorized to make the above answers on behalf of the Oklahoma Department of Securities, that the above answers have been prepared with assistance of counsel, that the answers are based either on his personal knowledge, the personal knowledge of the Oklahoma Department of Securities, or on information obtained from Oklahoma Department of Securities records, and that the answers are true to the best of my information and belief.

  
Irving L. Faught

Subscribed and sworn to before me this 7<sup>th</sup> day of November, 2007.

  
Notary Public # 14515  
Expires Sept 18, 2008

CERTIFICATE OF MAILING

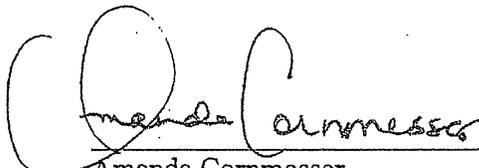
I hereby certify that a true and correct copy of the Plaintiff's Response to Defendants' First Set of Interrogatories was mailed this 7<sup>th</sup> day of November, 2007, by depositing it in the U.S. Mails, postage prepaid, to the following counsel of record:

Patrick J. Ryan, Esq.  
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Amanda Commesser

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FARMERS & MERCHANTS BANK, et al. )  
 )  
Defendants, )  
 )  
and )  
 )  
ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )  
 )  
Intervenors. )

Case No. CJ-2006-3311

**PLAINTIFF'S RESPONSE TO DEFENDANTS'**  
**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendants have included a section of "Instructions" and a section of "Definitions" in their discovery requests. Plaintiff Department objects to the extent that the content of either of these sections exceeds the provisions and requirements of the Oklahoma Discovery Code and Plaintiff responds accordingly. Moreover, with regard to the "Definitions," Plaintiff objects to any definition which varies from the usual and normal meaning of any such term.

The indication herein that production will be made does not mean that any of the documents called for exist. It means only that, subject to the general and specific objections made, they will be produced to the extent that the Department has been able to locate responsive documents.

Plaintiff, as a state regulatory agency, is charged with handling documents that are protected by 71 O.S. § 1-607 from public disclosure and that include personal identifiers and



sensitive financial information of individuals, many of whom are not parties to this litigation and have a right or interest in the privacy of that information. Therefore, the inspection and copying of many of the documents requested by Defendants must necessarily be subject to an order protecting the further disclosure of such sensitive personal and statutorily protected information. The Department objects to the disclosure of such information until an appropriate protective order is entered in this case. In that regard, the Department will immediately circulate for agreement a proposed protective order, and if the parties are unable to reach an agreement, petition the court for such an order.

Specifically, the Plaintiff objects to the definition of the terms "you" and "your" in Definition No. 2. The Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf" of any person. Rather the Department is acting as a public agency enforcing public policy. The Department has a duty to advance the public interest, which is separate and apart from (although it may frequently occur with) the interest of injured investors. *SEC v. Egan*, 856 F. Supp. 401 (N.D. Ill. 1993).

In addition, the Department objects to Instruction No. 1 wherein Defendants state that they are directing their interrogatories toward all information available to the Department "upon its reasonable inquiry". The Department is under no obligation to seek information that is not contained in the records or documents already in its possession, custody or control, or within the knowledge of any officer, employee, attorney, investigator or agent of the Department. 12 O.S. § 3234(A)(1). The persons who lost money in Marsha Schubert's investment scheme are not within or under the Department's control. It is Defendants' responsibility to subpoena pertinent third parties for their information. *Central Cal. Conference Ass'n of Seventh-Day Adventists v.*

*Great American Ins. Co.*, 1998 WL 46813 (D. Or.).

Plaintiff also specifically objects to any request that calls for information or communications exchanged between or among it and other regulatory or governmental agencies. The Oklahoma Securities Act provides for the Department's cooperation and coordination with other governmental and regulatory agencies and specifically protects the sharing of records and information with those agencies. 71 O.S. § 1-608. In addition, the Department's communications with other governmental and regulatory agencies are protected by the deliberative process privilege and the work-product doctrine.

Plaintiff states that many of Defendants' discovery requests necessarily require interpretation. Such interpretation by the Plaintiff may, in some or all cases, be different from that which Defendants intended. The Plaintiff hereby places Defendants on notice that such interpretation has necessarily taken place in responding to Defendants' requests for production.

Further, all answers and documents produced are made with an express reservation of the general objections set forth above and any specific objections set forth below, and a provision of any response herein or production of any document in response hereto is not and cannot be deemed a waiver of any such objection. Plaintiff reserves the right to supplement its responses as required by 12 O.S. § 3226.

**REQUEST NO. 1:** All documents sufficient to identify the names, current or last known addresses, and telephone numbers of all persons on behalf of whom ODS claims Defendants are jointly and severally liable to and is seeking restitution.

**RESPONSE TO REQUEST NO. 1:** Plaintiff objects to Request No. 1 as the Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf" of any person. Without waiving any objection, the names and addresses of persons who have filed receivership claims and received distributions through the Receiver are available in the public filings of the Logan County case, CJ-2004-256.

**REQUEST NO. 2:** All documents provided by ODS to persons who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 2:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 3:** All documents reflecting communications between ODS and persons who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 3:** Plaintiff objects to Request No. 3 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, the deliberative process privilege, and/or the work product doctrine. The documents withheld are in the nature of notes made by Department attorneys or investigators at the direction of Department attorneys. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 4:** All documents sufficient to identify ODS employees, representatives, and agents, excluding clerical staff, who performed work in connection with the investigation of Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 4:** Plaintiff objects to Request No. 4 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of spreadsheets and/or analysis, internal communications and attorney notes. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 5:** All documents reflecting or concerning any agreements or understandings between ODS and the Receiver concerning the recovery of monies for those Persons who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 5:** Plaintiff objects to Request No. 5 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege and for communications between the Receiver and the Department which are privileged under 12 O.S. § 2502(B)(3). The documents withheld are in the nature of communications relating to Oklahoma County Case, CJ-2005-3796. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 6:** All documents provided to ODS or received by ODS from any source in connection with ODS File No. 05-031, including those from: (a) Marsha Schubert; (b) Schubert & Associates; (c) Richard L. Schubert d/b/a Schubert & Associates; (d) Richard L. Schubert; (e) AXA Advisors L.L.C.; (f) the SEC, the NASD, or any other state, federal, or private agency; (g) Wilbanks Securities, Inc.; or (h) any person who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 6:** Plaintiff objects to Request No. 6 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, and/or the attorney-client privilege. Specifically, the Plaintiff asserts that any documents responsive to part (f) of this request are protected by the deliberative process privilege and 71 O.S. § 1-608. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 7:** All documents concerning any communications between or among ODS and any person who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 7:** Plaintiff objects to Request No. 7 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, the deliberative process privilege, and/or the work product doctrine. The documents withheld are in the nature of notes made by Department attorneys or investigators at the direction of Department attorneys. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 8:** All documents sufficient to identify all persons that were involved in the alleged sale of securities to those persons who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 8:** Plaintiff objects to Request No. 8 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 9:** All documents ODS received from or provided to any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**RESPONSE TO REQUEST NO. 9:** Plaintiff objects to Request No. 9 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 10:** All documents concerning communications between or among ODS and any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**RESPONSE TO REQUEST NO. 10:** Plaintiff objects to Request No. 10 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 11:** All documents concerning or reflecting any testimony or interviews given by ODS to any other state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**RESPONSE TO REQUEST NO. 11:** Plaintiff objects to Request No. 11 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation. Without waiving any objections, there are no documents responsive to this request.

**REQUEST NO. 12:** All document requests and subpoenas addressed to ODS by any state, federal, or private agency or entity conducting any formal or informal inquiry or investigation concerning Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**RESPONSE TO REQUEST NO. 12:** Plaintiff objects to Request No. 12 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 13:** To the extent not provided in response to the foregoing Requests, all documents relating to any formal or informal inquiries, investigations, lawsuits or regulatory actions by any state, federal, or private agency or entity concerning the following:

- (a) Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants' compliance with federal and/or state laws and regulations;
- (b) Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., or Wilbanks Securities, Inc.'s compliance with regulations of registered broker-dealers.

**RESPONSE TO REQUEST NO. 13:** Plaintiff objects to Request No. 13 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 14:** All documents, including, without reservation, notices, minutes, exhibits, notes, agendas or resolutions of all meetings of ODS's Board between 2004 to the present, including any committee or subcommittee thereof (or any other body responsible for management of ODS's business), in which Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants were discussed, and all documents distributed to, utilized in connection with, or otherwise relating to any such meetings, and all communications generated in connection with such meetings.

**RESPONSE TO REQUEST NO. 14:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 15:** All documents concerning any analysis performed by ODS or any other person, relating to:

- (a) F&M Bank and BancFirst's compliance with banking policies and/or banking regulations;
- (b) F&M Bank and BancFirst's compliance with their internal policies, including internal audits;
- (c) regulatory or other formal or informal inquiry or investigation of F&M Bank and BancFirst;

**RESPONSE TO REQUEST NO. 15:** Plaintiff objects to Request No. 15 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the

Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation. Without waiving any objections, there are no responsive documents relating to BancFirst.

**REQUEST NO. 16:** All documents concerning any sale or purchase made by any person who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 16:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 17:** All documents concerning communications or writings about this litigation, whether internal or received from or sent to any other person or entity.

**RESPONSE TO REQUEST NO. 17:** Plaintiff objects to Request No. 17 as it is overly broad.

**REQUEST NO. 18:** All press releases, announcements, news articles, interviews, conferences or other public disclosures concerning Marsha Schubert's purported investment program and/or the Defendants' alleged liability in this case, whether prepared by ODS or any other person, including all drafts, revised versions, and final versions.

**RESPONSE TO REQUEST NO. 18:** Plaintiff objects to Request No. 18 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications between the Department lawyers and the Administrator. Inspection of such other documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 19:** All organizational charts of ODS and all documents that describe its structure and management hierarchy.

**RESPONSE TO REQUEST NO. 19:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 20:** All documents that constitute or refer to correspondence, meetings, or communications between ODS and Marsha Schubert, Richard Schubert, AXA Advisors, L.L.C., Wilbanks Securities, Inc., BancFirst, F&M Bank, Farmers & Merchants Bancshares, Inc., or any of the Individual Defendants.

**RESPONSE TO REQUEST NO. 20:** Plaintiff objects to Request No. 20 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 21:** All correspondence and communications between, and documents to and from, ODS and BancFirst relating to the subject matter of this litigation.

**RESPONSE TO REQUEST NO. 21:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 22:** All correspondence and communications between, and documents to and from, ODS and AXA Advisors, L.L.C. relating to the subject matter of this litigation.

**RESPONSE TO REQUEST NO. 22:** Plaintiff objects to Request No. 22 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 23:** All correspondence and communications between, and documents to and from, ODS and Wilbanks Securities, Inc. relating to the subject matter of this litigation.

**RESPONSE TO REQUEST NO. 23:** Plaintiff objects to Request No. 23 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 24:** All documents concerning any actual or potential violation by AXA Advisors, L.L.C., Wilbanks Securities, Inc., and/or BancFirst of any securities law or regulation relating to Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 24:** Plaintiff objects to Request No. 24 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted. Without waiving any objection, there are no such documents responsive to this request as to BancFirst.

**REQUEST NO. 25:** All documents concerning complaints against Defendants, which involve any subject matter covered in any allegation made by ODS against Defendants, by persons who lost money in Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 25:** There are no such documents responsive to this request.

**REQUEST NO. 26:** All documents received from or provided to any lawyer representing Marsha Schubert, Schubert & Associates, AXA Advisors, L.L.C., BancFirst, or Wilbanks Securities, Inc. relating to Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 26:** Plaintiff objects to Request No. 26 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation and/or any documents subject to a protective order in Oklahoma County Case No. CJ-2005-3799. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 27:** All documents evidencing investment proceeds deposited by Marsha Schubert into bank accounts owned or controlled by Marsha Schubert, excluding Schubert's F&M accounts.

**RESPONSE TO REQUEST NO. 27:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 28:** All "Schubert & Associates Questionnaire" forms completed by investors and submitted to ODS either through ODS's website, the United States mail, or any other means of communications.

**RESPONSE TO REQUEST NO. 28:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 29:** All licensing records maintained by ODS for Marsha Schubert and all prior complaints by or on behalf of any person or entity involving Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities.

**RESPONSE TO REQUEST NO. 29:** Plaintiff objects to Request No. 29 as it is overly broad because it calls for documents not relevant to the subject matter of this litigation that are otherwise non-public records. Without waiving any objections, inspection of such documents in the possession, custody or control of the Department relevant to the subject matter of this litigation will be permitted.

**REQUEST NO. 30:** All account statements created by Marsha Schubert and provided to investors in Schubert's purported investment program as alleged by ODS in paragraph 41 of its Petition.

**RESPONSE TO REQUEST NO. 30:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 31:** All deposition transcripts taken in ODS's action against Marsha Schubert in Logan County, Oklahoma, Case No. CJ-2004-256, excluding those taken of F&M employees.

**RESPONSE TO REQUEST NO. 31:** All deposition transcripts in the Logan County matter are available through Word for Word Reporting, LLC, 100 N. Broadway Ave., Suite 3250, Oklahoma City, Oklahoma.

**REQUEST NO. 32:** All correspondence and communications between, and documents to and from, ODS and Renee Huffaker relating to the subject matter of this litigation.

**RESPONSE TO REQUEST NO. 32:** Plaintiff objects to Request No. 32 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of the Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 33:** All correspondence and communications between, and documents to and from, ODS and the Receiver relating to the subject matter of this litigation.

**RESPONSE TO REQUEST NO. 33:** Plaintiff objects to Request No. 33 for the reason that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege and for communications between the Receiver and the Department which are privileged under 12 O.S. § 2502(B)(3). The documents withheld are in the nature of communications relating to Oklahoma County Case, CJ-2005-3796, and records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation.

**REQUEST NO. 34:** All documents, including but not limited to worksheets and calculations, which relate in any way to ODS's assertion that the Defendants make restitution to the Receiver for the benefit of those investors who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 34:** Plaintiff objects to Request No. 34 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation and/or any documents subject to a protective order in Oklahoma County Case No. CJ-2005-3799. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 35:** All documents reflecting the amount of monies recovered by the Receiver from any source.

**RESPONSE TO REQUEST NO. 35:** All monies recovered by the Receiver are identified in accounting reports that are filed monthly by the Receiver with the Logan County District Court in Case No. CJ-2004-256.

**REQUEST NO. 36:** All documents concerning or evidencing any person who lost money in Marsha Schubert's purported investment program and the amount of their loss.

**RESPONSE TO REQUEST NO. 36:** Plaintiff objects to Request No. 36 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of notes made by Department lawyers. Inspection of any such other documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 37:** All bank statements, cancelled checks, and other documents reflecting any person's investment or payment to Marsha Schubert as part of her purported investment program.

**RESPONSE TO REQUEST NO. 37:** Plaintiff objects to Request No. 37 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of notes made by Department lawyers. Inspection of any such other documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 38:** All monthly, quarterly, or annual summary of investment activity sent by Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities to any person who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 38:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 39:** All confirmation statements sent by Marsha Schubert, AXA Advisors, LLC, or Wilbanks Securities to any person who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 39:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 40:** All documents concerning or evidencing the amount(s) invested by any person who lost money in Marsha Schubert's purported investment program.

**RESPONSE TO REQUEST NO. 40:** Plaintiff objects to Request No. 40 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of notes made by Department lawyers. Inspection of any such other documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 41:** All documents concerning or evidencing any amounts paid by the Receiver, Wilbanks Securities, or AXA Advisors, LLC to any person who lost money in Marsha Schubert's purported investment program, including any amounts where there is a legal obligation to pay.

**RESPONSE TO REQUEST NO. 41:** Plaintiff objects to Request No. 41 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

[No Request Number 42]

**REQUEST NO. 43:** All documents concerning or reflecting any meeting or telephone conversation between any person who lost money in Marsha Schubert's purported investment program and Marsha Schubert.

**RESPONSE TO REQUEST NO. 43:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 44:** All telephone records and notes of telephone calls or conversations that occurred between persons who lost money in Marsha Schubert's purported investment program (and any person acting on their behalf) and Marsha Schubert between January 2000 and December 2004.

**RESPONSE TO REQUEST NO. 44:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 45:** Financial statements or similar statements of the assets, liabilities, and/or net worth of persons who lost money in Schubert's purported investment program for the period of time covering three years prior to their first transaction with Marsha Schubert to April 21, 2006.

**RESPONSE TO REQUEST NO. 45:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 46:** Copies of all documents that persons who lost money in Marsha Schubert's purported investment program received from Marsha Schubert and from any entities in which they invested through Marsha Schubert, including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence for three years prior to their first transaction with Marsha Schubert through April 21, 2006.

**RESPONSE TO REQUEST NO. 46:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 47:** All records of investment activity for any person who lost money in Marsha Schubert's purported investment program for three years prior to their first transaction with Marsha Schubert through April 21, 2006. This request includes all statements or summaries of account(s) such person had with any investment advisor, broker-dealer, or other person or entity who invested money on their behalf.

**RESPONSE TO REQUEST NO. 47:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 48:** All contracts, agreements, or other documents relating to your account with each such investment advisor, broker-dealer, or other person or entity who invested your money for three years prior to your first transaction with Marsha Schubert through April 21, 2006.

**RESPONSE TO REQUEST NO. 48:** Plaintiff reiterates its objection to the definition of "you". The Plaintiff has filed an enforcement action and is not seeking restitution on behalf of any investor or other person. Without waiving any objection, inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 49:** All federal and state tax returns for any person who lost money in Marsha Schubert's purported investment program for the years 1997 through 2006.

**RESPONSE TO REQUEST NO. 49:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 50:** All letters, written inquiries, or documents you sent to AXA Advisors, LLC or Wilbanks Securities regarding Marsha Schubert or any investments you made with or through Marsha Schubert.

**RESPONSE TO REQUEST NO. 50:** Plaintiff reiterates its objection to the definition of "you". The Plaintiff has filed an enforcement action and is not seeking restitution on behalf of any investor or other person. Without waiving any objection, inspection of such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 51:** All documents concerning any due diligence efforts undertaken by you, your representatives, or any other person in connection with each transaction involving Marsha Schubert's purported investment programs.

**RESPONSE TO REQUEST NO. 51:** Plaintiff reiterates its objection to the definition of "you". The Plaintiff has filed an enforcement action and is not seeking restitution on behalf of any investor or other person. Without waiving any objection, the Plaintiff has no such documents.

**REQUEST NO. 52:** All previously prepared written statements by persons with knowledge of the facts and circumstances related to the subject matter of this litigation, including those by accountants, tax advisors, financial planners, or other associated person(s), and any other third party.

**RESPONSE TO REQUEST NO. 52:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 53:** All documents showing action taken by persons who lost money in Marsha Schubert's purported investment program to limit losses in the transaction(s) at issue.

**RESPONSE TO REQUEST NO. 53:** Inspection of any such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 54:** All documents identified, reviewed, referred to, or relied upon in ODS's answers to Defendants' interrogatories.

**RESPONSE TO REQUEST NO. 54:** Plaintiff objects to Request No. 54 to the extent that it calls for the production of items that are protected from disclosure by 71 O.S. § 1-607, 71 O.S. § 1-608, the deliberative process privilege, the work product doctrine, and/or the attorney-client privilege. The documents withheld are in the nature of communications and records exchanged with other governmental or regulatory agencies and records obtained by the Administrator or created by representatives of Administrator in connection with an audit, exam or investigation. Inspection of any other such documents in the possession, custody or control of the Department will be permitted.

**REQUEST NO. 55:** All documents evidencing any release, settlement, or other agreement pursuant to which the liability of any person for any injury or damage arising out of the subject matter of this litigation has been limited, reduced, or released in any manner.

**RESPONSE TO REQUEST NO. 55:** Inspection of such documents in the possession, custody or control of the Department will be permitted.

Respectfully submitted,



A handwritten signature in cursive script, appearing to read "Amanda Cornmesser", is written over a horizontal line.

Melanie Hall, OBA #1209  
Amanda Cornmesser, OBA #20044  
Gerri Stuckey, OBA #16732  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102  
Attorneys for Plaintiff



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September 26, 2008

Amanda Cornmesser, Esq.  
The Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102

Re: *Oklahoma Department of Securities ex rel., Irving L. Faught, Administrator v. Farmers & Merchants Bank, et al.*  
In the District Court of Oklahoma County, State of Oklahoma  
Case No. CJ-2006-3311  
Our File No. 1285.001

Dear Amanda:

You and I previously discussed during our “meet and confer” conference the Department’s objection to Interrogatory No. 3. That particular interrogatory sought information from the Department relating to facts and circumstances that would give rise to Defendants’ joint and several liability under 71 O.S. § 408(b) of the Predecessor Act and 71 O.S. § 1-509(G)(5) of the Successor Act.<sup>1</sup>

The Department objected to answering the interrogatory on grounds that it “does not represent the individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants ‘on behalf’ of any person.” The Department also stated that such “information requested in this Interrogatory No. 3 was not requested by Plaintiff . . .” See *Plaintiff’s Response to Defendants’ First Set of Interrogatories*.

However, irrespective of whether such information was requested from the short investors, the Department must have a good faith basis – formed after an inquiry reasonable under the circumstances – that the Department’s claims “are warranted under existing law” and that the “allegations and other factual contentions have evidentiary support.” See 12 O.S. § 2011(B)(2) and (3).

<sup>1</sup> Please note that there was a “typo” in Interrogatory No. 3, at subparagraph (e). The reference should be to 71 O.S. § 1-509(B), not 71 O.S. § 1-509(C).



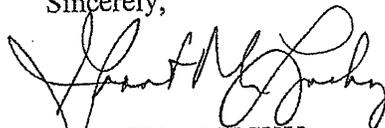
Thus, the Department must have evidentiary support for its argument that Defendants are jointly and severally liable under 71 O.S. § 408(b) of the Predecessor Act and 71 O.S. § 1-509(G)(5) of the Successor Act. Judge Parrish has ruled that Defendants' joint and several liability arises only under these two statutes, which requires proof of: (1) Marsha Schubert's liability under 71 O.S. § 408(a)(2) or § 1-509(B); and (2) Defendants' material participation or aid in each sale violative of § 408(a)(2) or Defendants' material aid in the conduct giving rise to Schubert's liability under § 1-509(B). The information requested by Defendants in Interrogatory 3 goes to the very heart of your claim for joint and several liability and Defendants are entitled to know the material facts upon which the Department intends to rely.

If the Department does not have this information, then the Department simply cannot support its claims against Defendants for joint and several liability.

Consequently, I respectfully request that the Department provide complete answers to Interrogatory No. 3 within the next thirty (30) days. At a minimum, such answers would include the facts supporting Marsha Schubert's liability under the applicable law set forth above (and as further discussed by Judge Parrish at our discovery hearing on August 29<sup>th</sup>) as well as facts tending to establish how the Defendants materially participated in the sales that violated 71 O.S. § 408(a)(2) and/or how the Defendants materially aided in the conduct giving rise to Schubert's liability under 71 O.S. § 1-509(B).

I look forward to receiving your amended answers. If the Department refuses to provide amended answers, please notify me immediately so I can take appropriate action.

Sincerely,



GRANT M. LUCKY  
For the Firm

GML:arm

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )

Plaintiff, )

vs. )

Case No. CJ-2006-3311

FARMERS & MERCHANTS BANK, et al. )

Defendants, )

and )

ROBERT LYNN POURCHOT, Trustee of the )  
Robert Lynn Pourchot Trust, et al., )

Intervenors. )

**AMENDMENT TO PLAINTIFF'S RESPONSE TO  
DEFENDANTS' FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 3:** With respect to each investor identified in the preceding interrogatory, please identify the following:

- (a) The date(s) that Marsha Schubert sold a security to the investor;
- (b) Facts evidencing a sale of a security, including the method of payment;
- (c) A description of the security;
- (c) Whether the sale was solicited by Marsha Schubert or unsolicited;
- (d) A description of the material terms of the sale;
- (e) A description of each statement made by Marsha Schubert to the investor, including, but not limited to, the time, place, and content of each statement, alleged by ODS to have been in violation of 71



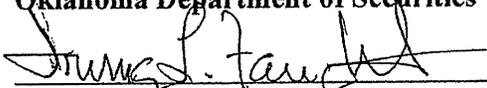
O.S. § 408(a)(2) and/or 71 O.S. § 1-509(C);

- (f) The material or principal facts upon which ODS relies as evidence of each Defendant's material participation and/or material aid in each sale of a security as described above;
- (g) Identify the documents evidencing the sale;
- (h) Identify the person(s) who witnessed each sale to the investor.

**RESPONSE TO INTERROGATORY NO. 3:** Plaintiff objects to Interrogatory No. 3 as the Department does not represent individual investors in its enforcement actions and is not seeking an order of restitution against the Defendants in this matter "on behalf" of any person. Without waiving the objection, the names and addresses of those persons who have filed receivership claims and received distributions through the Receiver are available in the public filings with the Logan County District Court in Case No. CJ-2004-256. Inspection of any records known by Plaintiff to contain information responsive to Interrogatory No. 3, and in the possession, custody or control of the Department, will be permitted as requested at the offices of the Department during normal business hours.

**Oklahoma Department of Securities**

By:

  
\_\_\_\_\_  
Irving L. Faught, Administrator  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102

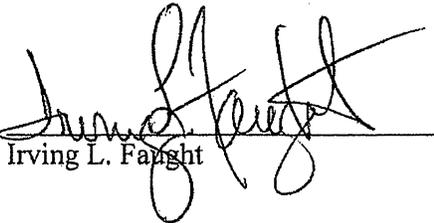
As to the interrogatories to which objections have been made:

By:

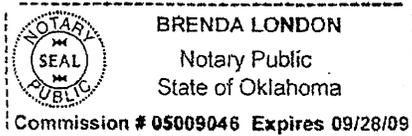
  
\_\_\_\_\_  
Melanie Hall  
Attorney for Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
405.280.7700

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OKLAHOMA )

I, Irving Faught, of lawful age, being first duly sworn, upon oath states that he is the Administrator of the Oklahoma Department of Securities and is authorized to make the above answers on behalf of the Oklahoma Department of Securities, that the above answers have been prepared with assistance of counsel, that the answers are based either on his personal knowledge, the personal knowledge of the Oklahoma Department of Securities, or on information obtained from Oklahoma Department of Securities records, and that the answers are true to the best of my information and belief.

  
Irving L. Faught

Subscribed and sworn to before me this 23 day of October, 2008.



  
Notary Public

10/23/08 10:14 AM

**CERTIFICATE OF MAILING**

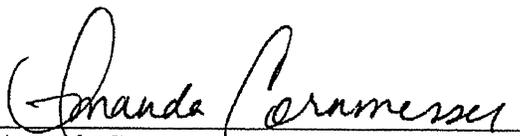
I hereby certify that a true and correct copy of the *Amendment to Plaintiff's Response to Defendants' First Set of Interrogatories* was mailed this 23rd day of October, 2008, by depositing it in the U.S. Mails, postage prepaid, to the following counsel of record:

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Amanda Cormmesser